

PATRICK BRESLIN

IBLA 2000-69

Decided May 29, 2003

Appeal from a decision of the Phoenix Field Office, Bureau of Land Management, constituting a determination of nonconcurrence with occupancy and a permanent cessation order with respect to use and occupancy of mining claims. AMC 350686-350689.

Affirmed.

1. Mining Claims: Surface Uses--Surface Resources Act: Occupancy

A mining claimant has no right to use or occupy the surface of a mining claim site unless the activity constituting the reason for the use or occupancy is reasonably incident to mining-related operations.

APPEARANCES: Patrick Breslin, Peoria, Arizona, pro se; Richard R. Greenfield, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Patrick Breslin (Breslin) has appealed from an October 20, 1999, decision of the Phoenix, Arizona, Field Office, Bureau of Land Management (BLM), with respect to occupancy of the High 12 and High 12 #1-3 mining claims (AMC 350686 through 350689), located in secs. 24 and 25, T. 10 N., R. 5 W., Gila and Salt River Meridian, Yavapai County, Arizona. The decision, entitled, "Determination of Nonconcurrence and Permanent Cessation Order," requires Breslin, within 90 days, to "reclaim the occupancy site by removing all structures, equipment, and trash. \* \* \* The concrete pad must be removed and the area reclaimed by re-contouring, scarifying and re-seeding with a seed mixture approved by the BLM." (Decision at 3.) Breslin filed a notice of appeal and a request for a stay.<sup>1/</sup> This Board granted the stay by order

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<sup>1/</sup> Breslin did not submit a formal Statement of Reasons (SOR). For purposes of this appeal, we will construe the list of statements in his notice of appeal as Breslin's SOR.

dated February 15, 2000, but advised Breslin that he must submit further proof of his assertions in the notice of appeal or he would not prevail.

Breslin's appeal stems from BLM's enforcement of regulations implementing section 4(a) of the Surface Resources Act of 1955, 30 U.S.C. § 612(a) (2000). This provision provides that claims located under the mining laws of the United States "shall not be used, prior to issuance of patent therefor, for any purposes other than prospecting, mining or processing operations and uses reasonably incident thereto." Id. On July 16, 1996, BLM promulgated regulations at 43 CFR Subpart 3715 to implement, inter alia, section 4(a). 61 FR 37116 (July 16, 1996). These rules required persons with existing uses and occupancies to notify BLM of their occupancies by October 15, 1996, in which case any such person had one year to bring the occupancy into compliance with the rules. 43 CFR 3715.4(b).

On October 11, 1996, Breslin filed a BLM form entitled "Existing Occupancy Notification" notifying BLM of an occupancy located in secs. 24 and 25, T. 10 N., R. 5 W., Gila and Salt River Meridian, Yavapai County, Arizona. Breslin stated that he was engaged in casual use activities and represented that he would file a notice of operations under 43 CFR Subparts 3802 or 3809, the regulations governing exploration, mining, and surface management of lands under wilderness review and other public lands, respectively.

On April 2, 1998, BLM conducted the first field inspection of this area where it found an occupancy in sec. 24 in the form of a blue "butler style" building on a concrete pad. (Apr. 2, 1998, 3809/3715 Field Inspection Form, AZA Number 30461-0.) The inspector "could not find any evidence of mining or ore processing on this site." Id. On May 18, 1998, BLM sent Breslin a certified letter asking him to explain whether the occupancy noted in Breslin's October 11, 1996, notification form referred to the blue building found in the area. If so, BLM informed Breslin that he must submit information required by 43 CFR 3715.3-2 in sufficient detail to substantiate that his use of the property was incidental to mining, and to submit a mining notice or plan of operation pursuant to, and otherwise comply with, 43 CFR Subpart 3809. (May 18, 1998, letter from BLM Field Manager to Breslin at 2.) The certified letter was returned uncollected.

On June 30, 1998, BLM conducted another field inspection and commented that the site was in the same condition as it was during the last inspection, with no evidence of mining or ore processing and no ground activity. (June 30, 1998, 3809/3715 Field Inspection Form, AZA Number 30461-0.) The inspection form noted that the site appeared abandoned. Id. On July 6, 1998, BLM conducted another field inspection of the area and repeated the comments found on the June 30 inspection form. (July 6, 1998, 3809/3715 Field Inspection Form, AZA Number 30461-0.)

The record reflects that Breslin phoned Ron Smith, a geologist for BLM, on August 11, 1998, to inform BLM that the post office had returned the certified letter before he could pick it up. Breslin and Smith agreed that BLM would resend the letter, and on August 13, Breslin collected it. On August 17, 1998, Breslin called again, advising that he had received the letter and instructions provided therein regarding BLM regulations. Breslin stated that he might let his mining claims lapse at the end of the month and refile them in the future. Breslin inquired about purchasing the land on which the claims were located, about obtaining mineral patents, and about requirements of regulations at 43 CFR Subpart 3809. The record indicates that Smith was to send Breslin the information about the regulations, and that Smith expected Breslin's 3809 and 3715 filings to be submitted within 30 days. (Aug. 17, 1998, Conversation Record.)

Shortly after the phone conversation, Breslin filed the four new notices of mining claim location for the High 12 and High 12 #1-3 mining claims in Yavapai County, on September 30, 1998. The claims, which covered the occupancy site, were serialized as AMC 350686, 350687, 350688, 350689. However, Breslin submitted nothing in response to BLM's request for information under 43 CFR Subparts 3715 and 3809.

On November 24, 1998, BLM conducted another field inspection. The inspector noted the continued presence of the blue building and stated that the operator "has not filed a mining notice or plan of operations pursuant to 43 CFR 3809 for the surface displacement created by placement of this structure." (Nov. 24, 1998, 3809/3715 Field Inspection Form, AZA Number 30461-0.) The form also stated that the site was in the same condition as it was during the last inspections, with no evidence of mining or ore processing on the site and no observable ground activity. *Id.* The field inspector recommended that BLM request the information required by 43 CFR 3715.3-2 and 43 CFR Subpart 3809 or else consider the structure abandoned and commence preparations to dispose of it accordingly. *Id.* Three more field inspections occurred on April 22, June 10, and August 13, 1999, with similar results.

Finally, on October 20, 1999, BLM issued the challenged decision. BLM stated that it "does not concur with any element of residential occupancy located on your mining claim known as the HIGH 12 and HIGH 12 # 1-3 (AMC 350686-350689) \* \* \*. The BLM finds your occupancy and use of the above mentioned lands to be in violation of 43 CFR 3715 \* \* \*." (Oct. 20, 1998, Decision, Determination of Nonconcurrence and Permanent Cessation Order at 1.) As noted above, BLM ordered Breslin to reclaim the occupancy site and remove the building. BLM notified Breslin of potential fines and of the civil authority of the United States and advised him that the property remaining on the site after 90 calendar days would become property of the government.

In his notice of appeal, Breslin contends that the blue building is strictly a “commercial building” which was erected in 1982 “under all existing rules and permits existing at that time.” See Nov. 16, 1999, Notice of Appeal ¶¶ 1-2. Breslin also contends that BLM approved the building. Breslin states without explanation that the building is “reasonably incident and important and reasonably calculated to lead to the extraction and beneficiation of minerals.” *Id.* at ¶ 3. He also states that it “is necessary in protecting exposed, concentrated or otherwise accessible valuable minerals from theft or loss as soon as the operation resumes.” *Id.* at ¶ 5. Furthermore, Breslin asserts that although a mining plan has not been instituted, he was in the process of negotiating “a lease” with AURIC Resources International, Inc. *Id.*

Breslin requested a sixty day stay of the Order. BLM filed a Motion to Dismiss on December 21, 1999. The Board granted a stay on February 15, 2000, pending completion of Breslin’s filing of a plan of operation or mining plan demonstrating compliance with 43 CFR 3715.2, 3715.5 and Subpart 3809. The Board stated:

Insofar as appellant’s reasonable likelihood of success on the merits is concerned, we must agree with counsel for BLM that, on the present record, the decision of the Phoenix District Office seems fully justified. In a recent decision styled Firestone Mining Industries, Inc., 150 IBLA 104 (1999), we observed, in a similar context, that “[t]he possibility that milling will recommence sometime in the future when the economics of such an undertaking become favorable, however, does not justify current use and occupancy of the millsite.” *Id.* at 111. If, at the time that this appeal is reached for adjudication, the instant record fails to show that Breslin has rectified his failure to file a mining plan of operations and otherwise commenced activities sufficient to warrant commercial occupancy of these claims, there is little doubt but that BLM’s decision will be affirmed.

(Feb. 15, 2000, Order, IBLA 2000-69 at 2.)

[1] The regulations at 43 CFR Subpart 3715 confirm the validity of this conclusion. Those rules permit occupancy that is “reasonably incident” to mining and which conforms to requirements of regulations regarding surface use at 43 CFR Part 3800. 43 CFR 3715.5(a), (c). Activities that are the reason for an occupancy must

- (a) Be reasonably incident; (b) Constitute substantially regular work;
- (c) Be reasonably calculated to lead to the extraction and beneficiation of minerals; (d) Involve observable on-the-ground activity that BLM may verify under § 3715.7; and (e) Use appropriate equipment that is presently operable, subject to the need for reasonable assembly, maintenance, repair or fabrication of replacement parts.

43 CFR 3715.2. “Reasonably incident” includes actions or labor calculated to “prospect, explore, define, develop, mine, or beneficiate a valuable mineral deposit, using methods, structures, and equipment appropriate to the geological terrain, mineral deposit, and stage of development and reasonably related activities.” 43 CFR 3715.0-5.

Breslin fails entirely to explain how the occupancy of the site, in the form of the blue building, comports with these rules. BLM did not find any evidence of observable on-the-ground activity on the site, as required by 43 CFR 3715.2(d). See Firestone Mining Industries, Inc., 150 IBLA 104, 109 (1999). Breslin has no right to use or occupy the surface of the site unless his activities justifying the occupancy are reasonably incident to mining. Wilbur L. Hulse, 153 IBLA 362, 369 (2000); Bradshaw Industries, 152 IBLA 57, 63 (2000). Consequently, the presence of structures and items on the site constitute unnecessary or undue degradation of the public lands and resources which must be avoided under 43 CFR 3715.5(a). Wilbur L. Hulse, 153 IBLA at 370. Accordingly, BLM’s October 20, 1999, order to remove all structures and properly reclaim the site at issue is a reasonable implementation of the regulations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Lisa Hemmer  
Administrative Judge

I concur:

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C. Randall Grant  
Administrative Judge